

Inventor(s): Ashby, III et al.
Patent No. 5,852,803
Issued: December 22, 1998
Atty. Dkt. No. 5007-00700
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PATENT
5007-00700

DECLARATION UNDER 37 C.F.R. § 1.63 AND 37 C.F.R. § 1.175

As a below named inventor, I hereby declare that:

My residence, mailing address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or the below named inventors are the original, first and joint inventors (if plural names are listed below) of the subject matter which is claimed and for which U.S. Patent No. 5,852,803 has been granted entitled APPARATUS, SYSTEM AND METHOD FOR RECORDING AND/OR RETRIEVING AUDIO INFORMATION, the Specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by the preliminary amendment submitted herewith and specifically referred to herein.

I verily believe the original U.S. Patent No. 5,852,803 to be wholly or partly inoperative or invalid by reason of the patentee claiming more or less than the patentee had a right to claim in the patent. In particular, I believe that due to errors in the original patent, the patentee claimed less than the patentee had a right to claim. At least some of these errors are identified below.

Claim 4 of the original patent, for an "instructional apparatus", positively recites a "recording means capable of recording a vocal message into a storage device corresponding to said bar code label...". I believe that the patentee had a right, however, to claim an instructional apparatus not including such a recording means, and thereby obtain broader coverage.

Terminal 74 of Fig. 11 corresponds to the embodiment of claim 4, in which a message corresponding to a bar code may be retrieved. Although terminal 74 may include a recording device such as microphone 14 shown in Fig. 11, a recording device is not necessary to at least

some embodiments of the instructional apparatus. For example, the memory medium accessed by central computer 78 within terminal 74 may be a CD ROM or a floppy disk, as described in col. 10, lines 31-34. The information stored on such a memory medium may further be recorded by the manufacturer of the product to which the bar code is attached, as described in col. 9, lines 39-54. In an embodiment for which information on a CD ROM or floppy disk is recorded by a manufacturer, such recording would most likely be done at a remote location, and there would be no need for a recording means within the instructional apparatus of claim 4. The recording means of claim 4 is therefore not necessary to the claimed apparatus. This conclusion is further supported in the specification: "When bar code 72 is read, digital information from the bar code activates a pre-programmed vocal message stored within terminal 74...Vocal messages can be re-programmed by adding a suitable record circuit" (Specification--col. 9, lines 60-66). It is clearly indicated that the record circuit is optionally added to terminal 74 in the event that reprogramming is desired.

For at least the above reasons, I believe the positive recitation of "a recording means" in claim 4 of the original patent constitutes an error by causing the patentee to claim less than the patentee was entitled to claim, thereby rendering the patent wholly or partly inoperative or invalid.

Another error relates to the positive recitation of "a bar code label" in claim 4 of the original patent. I believe that the patentee had a right to claim an instructional apparatus not explicitly including a bar code label, and thereby obtain broader coverage.

As stated above, terminal 74 of Fig. 11 corresponds to the embodiment of claim 4. As shown in Fig. 11 and the related text in the patent, terminal 74 does not include bar code 72, but receives the bar code information through bar code reader 80. Bar code 72, along with product 10 to which it may be attached, can be considered a "workpiece" upon which the instructional apparatus operates. In this case, the apparatus reads the bar code information in order to identify, retrieve and play back information regarding the product to which the bar code is attached. The bar code label is therefore more properly associated with the product than with the claimed

apparatus providing instruction relating to the product. As such, inclusion of the bar code label in claim 4 unnecessarily limits the claim. I therefore believe that the positive recitation of "a bar code label" in claim 4 of the original patent constitutes an error by causing the patentee to claim less than the patentee was entitled to claim, thereby rendering the patent wholly or partly inoperative or invalid.

These errors are believed to be corrected by the new claims presented in the preliminary amendment submitted herewith. All errors which are being corrected in the present reissue application up to the time of filing of this declaration arose without any deceptive intention on the part of the applicant.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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(Roy G. Tiemann also signing as President and authorized
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reissue Application for:

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Group Art Unit: Unknown

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Examiner: Unknown

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Derrick Brown

POWER OF ATTORNEY

Commissioner for Patents
Washington, D.C. 20231

Dear Sir/Madam:

The undersigned is Assignee of the entire interest in the above-identified patent, as evidenced by the assignment recorded May 11, 1992 at Reel 6121, Frame 0166. As such, the undersigned assignee hereby elects, under 37 C.F.R. § 3.71, to prosecute the above-referenced reissue application to the exclusion of the inventors.

The assignee hereby revokes any previous Powers of Attorney and appoints Dan R. Christen, Reg. No. 39,943; Gentry E. Crook, Reg. No. 44,633; Kevin L. Daffer, Reg. No. 34,146; Mark R. DeLuca, Reg. No. 44,649; Jeffrey C. Hood, Reg. No. 35,198; B. Noël Kivlin, Reg. No. 33,929; Robert C. Kowert, Reg. No. 39,255; Lawrence J. Merkel, Reg. No. 41,191; Louise K. Miller, Reg. No. 36,609; Eric B. Meyertons, Reg. No. 34,876; David A. Rose, Reg.


No. 26.223; and David W. Quimby, Reg. No. 39.338 of the firm of Conley, Rose & Tayon, P.C., as attorney or agent for so long as they remain with such company or firm, with full power of substitution and revocation, to prosecute the application, to make alterations and amendments therein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Letters Patent.

Please direct all communications to:

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Assignee: CHIPS INTERNATIONAL, INC.

By:


Roy G. Fiemann
President


Date